IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTIETH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE THE ACTING CHIEF JUSTICE BILAL NAZKI

and
THE HON'BLE DR JUSTICE G.YETHIRAJULU

WRIT PETITION NO : 1018 of 2005

Between:

Battula Venkateswarlu,

S/o.Venkataiah Subbaiah
The Kastala Sand and Boats Works Coop Society Ltd.,

Kastala R/o.Atchampet Mandal,

Guntur District, A.P.

..... PETITIONER

AND

1 The Collector, Guntur District A.P.
2 The Joint Collector, Guntur District, A.P.
3 The District Level Sand Committee

Represented by its Chairman and

Chairman, Zilla Parishad
Guntur, Guntur District, Andhra Pradesh.
4 The District Panchayat Officer,

Guntur, Guntur District, A.P.
5 Nadakuduru Nageshwar Rao,

S/o.Venkata Subbaiah
The Konuru Sand and Boat Workers Coop.Society,

Konuru, Achtampet Village, Guntur District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of Mandamus declaring the action of the respondents No.1 to 4 in not putting the sand quarry at reach No.15 for the area Kastal, Konur, Kogantivaripalem, Chamarru, Gingupalli, Taduvai and Maripadu in Achampet Mandal Limits, Guntur District for auction even after the lease dt.1.11.2003, in favour of 5th respondent expired on 30.10.2004 as illegal, unconstitutional and violative of Article 14,16,21 and 300-A of Constitution of India and lease agreement dated 1.11.2003 executed in favour of the 5th respondent and consequently direct the respondents to auction the sand quarry at reach No.15 for the area Kastal, Konur, Kogantivaripalem, Chamarru, Gingupalli, Taduvai and Maripadu in Achampet Mandal Limits, Guntur District and pass such other order or orders.

Counsel for the Petitioner: MR.K.RAMAKANTH REDDY

Counsel for the Respondent Nos.1 to 4: G.P. for Panchayat Raj

Counsel for the Respondent No.5: Smt.N.Shoba

The Court made the following :

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ORDER:

Heard learned Counsel for the parties. Perused the record.

Petitioner filed this writ petition questioning the action of the respondent Nos.1 to 4 in not putting for auction the sand quarry at reach No.15 for the area Kastal, Konur, Kogantivaripalem, Chamarru, Gingupalli, Taduvai and Maripadu in Achampet Mandal Limits, Guntur District.

The contention of the petitioner is that sand quarry lease had been granted to the fifth respondent with effect from 02-11-2003 for a period of one year, which had to expire on 1-11-2004, and after the expiry of period of lease, no further auction was conducted and the lease was extended in favour of the fifth respondent, which was contrary to the terms and conditions of the lease.

The learned Counsel appearing for the respondents including respondent No.5 have stated that basically the lease was for a period of one year, but it could be

extended in terms of the A.P. Minor Mineral Concession Rules, 1966 (for brevity 'the rules') by one year more on enhancement of 10% premium. Therefore, the official respondents extended the lease for a period of one year by enhancing the premium by 10%.

The facts are not at dispute and the controversy is short. The writ petitioner was also a participant in the auction in which the fifth respondent was successful bidder. The writ petitioner had offered Rs.95,90,000/- as the bid amount, whereas the fifth respondent offered Rs.96,00,000/-, therefore, the contract was given in favour of the fifth respondent. A lease agreement was entered into between the official respondents and the fifth respondent on 1st November, 2003. Clause 5 of the said lease agreement reads as under:

> 'The lessee hereby agrees to pay during the said term the knocked down amount along with 10% enhancement towards second year lease amount 45 days before the expiry of the 1st lease period. In respect of registered Boatsmen Co-operative Society who remove and carry sand by Boats shall pay the knocked down amount in four equal quarterly installments well before the commencement of the quarter.'

But this clause was deleted and it bears the signatures of both the official respondents as well as the fifth respondent, which shows that the intention of the parties was to enter into contract for a period of only one year and not beyond one year.

The learned Counsel appearing for the fifth respondent has drawn our attention to Rule 9 (P) of the Rules. Rule 9 (P) would only apply, in our view, if the parties had intended to enter into the contract for two years. But, if the intention of the parties was not to go for a contract of two years, then Rule 9 (P) would have no application. In this case, the intention of the parties was clear and unambiguous, when they deleted Clause 5 from the lease agreement. Therefore, in our view, there was no reason for the State and the official respondents to extend the lease after its expiry.

The learned Counsel for the petitioner has further drawn our attention to the fact that although the lease period was over on 1st November, 2004, but by virtue of an order dated 20-09-2004, the contract was extended for a further period of three months and twelve days.

The learned Counsel for the fifth respondent submits that extension of 12 days was given because there was some religious ceremony viz., Pushkarams for twelve days in that area and during those twelve days, no sand quarry was possible. She also submits that for a period of three months, the fifth respondent could not execute the contract because of some problems created by the inhabitants, and when the fifth respondent approached the Court, the Court passed certain orders, and after lapse of six months, the State gave the extension.

We have our own doubts whether the fifth respondent was entitled to extension of the period of lease without payment of any additional premium above the premium amount that was already paid for a period of 12 months, as the fifth respondent continued quarry for almost 15 months, for which he did not pay any additional premium to the official respondents. But that is not the matter, which we are supposed to go into in this writ petition. However, we feel that there was no ground for the official respondents to extend the lease beyond the period for which the parties had entered into an agreement. Therefore, the impugned proceedings in ROC.No.3660/2003.G2 (R-15) dated 20-09-2004, extending the lease period, is hereby quashed. The official respondents are directed to invite fresh bids for auction in accordance with Rules. Any amount paid by the fifth respondent in consequence of the extension of the lease period shall be refunded to him.

Writ petition is accordingly disposed of. There shall be no order as to costs.

BILAL NAZKI, A.C.J.

DR.G.YETHIRAJULU, J.

20-04-2005

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Copy to:

1 The Collector, Guntur District A.P.
2 The Joint Collector, Guntur District, A.P.
3 The District Level Sand Committee

Represented by its Chairman and

Chairman, Zilla Parishad
Guntur, Guntur District, Andhra Pradesh.
4 The District Panchayat Officer,

Guntur, Guntur District, A.P.
5 Two CCs to the G.P for Panchayat Raj,

High Court Buildings,

High Court of A.P.,Hyderabad.(O.U.T.)

6 Two CD copies.